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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,712	10/03/2003	Jillian Cornish	08987-009001 / 9900.99	9880
26161	7590	01/09/2008		
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER BORGEEST, CHRISTINA M	
			ART UNIT 1649	PAPER NUMBER
			MAIL DATE 01/09/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/678,712	Applicant(s) CORNISH ET AL.	
	Examiner Christina Borgeest	Art Unit 1649	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 December 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 04 December 2007. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): 112, 1 of claim 2 and 8.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 2, 8, 23, 26 and 27.
Claim(s) objected to: _____.
Claim(s) rejected: 1, 5-8, 11, 12 and 21.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Elizabeth C. Kemmerer/
Primary Examiner, Art Unit 1646

Continuation of 11. does NOT place the application in condition for allowance because: The rejection of 1-18 and 21 under 35 U.S.C. 112, 1st paragraph is maintained because the claims still recite "administering...FGF-8", since SEQ ID NOs: 1, 2, and 3 only limit the phrase "FGF-8 agonist" and not FGF-8, the claims are still very broad and the issues raised in the Final rejection mailed 4 June 2007 still hold. Note that the rejection could be overcome and the claims would be allowable if the Applicants would amend claim 1 to recite "FGF-8, or an FGF-8 agonist, wherein the FGF-8 comprises an amino acid sequence the amino acid sequence of SEQ ID NO: 1, 2 or 3 and wherein the FGF-8 agonist comprises an amino acid sequence at least 95% identical to the amino acid sequence of SEQ ID NO: 1, 2 or 3" and cancel claim 2 (i.e., incorporate the limitation of claim 2 into claim 1). Likewise, claim 7 could be amended to recite "FGF-8, or an FGF-8 agonist, wherein the FGF-8 comprises an amino acid sequence the amino acid sequence of SEQ ID NO: 1, 2 or 3 and wherein the FGF-8 agonist comprises an amino acid sequence at least 95% identical to the amino acid sequence of SEQ ID NO: 1, 2 or 3" and cancel claim 8 (i.e., incorporate the limitation of claim 8 into claim 7) and claim 21 could be amended to recite "FGF-8, or an FGF-8 agonist, wherein the FGF-8 comprises an amino acid sequence the amino acid sequence of SEQ ID NO: 1, 2 or 3 and wherein the FGF-8 agonist comprises an amino acid sequence at least 95% identical to the amino acid sequence of SEQ ID NO: 1, 2 or 3" and cancel claim 23 (i.e., incorporate the limitation of claim 23 into claim 21).